Office-Supreme Court, U.S.
FILED
MAR 9 1981
ALEXANDER L. STEVAS,
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NO. 80-1530

IN THE SUPREME COURT OF THE UNITED STATES

OCTOTER TERM, 1980

BOISE BASEBALL CLUB, INC., an Idaho corporation,

PLAINTIFF-APPELLANT-PETITIONER,

v.

BOWIE K. KUHN, individually and as Commissioner of Baseball, LELAND McPHAIL, individually and as President of the American League of Professional Baseball Clubs, CHARLES FEENEY, individually and as President of the National League of Professional Baseball Clubs, et al., (see following title page for complete list of defendants-respondents),

DEFENDANTS-APPELLEES-RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

The immunity rule applied to major league baseball is outdated and should be overturned, and the Sherman Act applicable to the Major Leagues in their treatment of the Minor Leagues.

If the immunity rule should continue, then there is an implied duty upon the Majors not to overrun the Minors which the court should enforce.

Boise Baseball Club was denied a jury trial on a viable cause of action for tortious interference with contractual negotiations.

Major Leagues violated contractual duty in acquiring territory and Boise Baseball Club is entitled to a jury trial on said cause of action.

LIST OF PARTIES

Boise Baseball Club, Inc.

Bowie K. Kuhn, Commissioner, and all Major League clubs in the National League and American League as of 1976 (set forth in entirety on title page)

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NO._____

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Plaintiff-Appellant-Petitioner,

v.

BOWIE K. KUHN, individually and as Commissioner of Baseball, et al.,

Defendants-Appellees-Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled cause on the 11th day of December, 1980.

OPINION BELOW

The Memorandum opinion of the Court of Appeals is being reported (App. A, p. A-1). The Opinion of the United States District Court of Idaho is not reported (App. B, p. A-6).

JURISDICTION

The Judgment of the Court of Appeals was entered on the 11th day of December, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) (App. C, p. A-11).

QUESTIONS PRESENTED

This case raises four questions:

1. The dire need for majcr league baseball operators to be held subject to the Sherman Antitrust law just as every other sport in America, giving to this petitioner equal protection under the law.

2. If the immunity is to continue, then there is an implied duty upon the Majors not to overrun the Minors.

3. Tortious interference with petitioner's contractual negotiations with Medicine Hat business men.

4. Failure to abide by Rule 1 A of the Professional Baseball Agreement, namely the illegal and unconscionable taking of minor league territory.

STATUTES INVOLVED

The statutory provisions are §1 and 2 of the Sherman Act, 15 U.S.C. (App. D, p. A-12).

STATEMENT OF THE CASE

The petitioner is the Boise Baseball Club, a minor league baseball club that operated in Boise, Idaho and went out of business in 1976 because of the over-reaching tactics of these respondents, the major league operators. The Boise Baseball Club operated as a minor league club in the Northwest League, which is part of the National Baseball Association, which is a

minor league organization. The Northwest League, because of the tactics of the major league operators, changed membership cities constantly and almost on an annual basis over the last many years, never giving the League stability.

The players on the roster of the Boise Baseball Club were owned by the Oakland Athletics, one of the respondents. The practices of the major league defendants in controlling all the raw material of the industry, namely the players, prevents the Boise Baseball Club and almost all minor league clubs from acquiring and owning talent and keeping it. The Boise Baseball Club was unable to control its roster because of these practices. It attempted to move the baseball club to Medicine Hat in Alberta, Canada, but because of the tactics of the Oakland Baseball Club they were prevented from doing so, which was a tortious interference with the

contractual negotiations that the Boise Baseball Club had with the business men of Medicine Hat.

The Majors at their will can usurp and acquire minor league territory, which the American League defendants accomplished by taking over the Seattle territory which at that time was in the Northwest League, and the petitioner Boise Baseball Club was shut out from these negotiations or prevented from participating,which is a violation of the Professional Baseball Agreement and professional baseball rules, which is an Agreement between the Majors and the Minors. Because of these tactics, the Boise Baseball Club was rendered insolvent and not allowed to continue to operate in any organized minor baseball league.

SUMMARY FOR REASONS FOR GRANTING WRIT

1. Because of the long judicial

history and the difficulty of the minor league operator to operate within the free enterprise system and within the protection of the Sherman Antitrust Act, the Boise Baseball Club has been deprived of its opportunity to survive economically, and more importantly it has been denied due process within our judicial system. The immunity granted major league baseball is absolutely arbitrary and illegal.

2. If such an unfair doctrine is allowed to continue, then the court should require an implied duty upon the Majors not to overrun the Minors.

3. Tortious interference with Boise Baseball Club's contractual negotiations with Medicine Hat businessmen.

4. Failure of respondents to abide by Rule 1 A in acquiring minor league territory and the monopolistic unfairness of the rule.

REASONS FOR GRANTING WRIT

1. The Baseball Rule is Wrong -- Tragically Wrong.

Arguing the logic of why the baseball rule is wrong would be like carrying coal to Newcastle. The Law Review articles are legion that the baseball immunity rule is unfair, arbitrary, is a special privilege and creates disrespect for the law.

The baseball special privilege rule has only looked at the major league side oi baseball. In 1949 there were 59 minor leagues -- today there are only 19. The Supreme Court has been the primary cause of many civic-minded minor league operators going bankrupt, or going out of business. Basically, owning a minor league franchise is a license to lose money. There have been many hearings before the Subcommittee on Antitrust and Monopoly, of the Committee of the Judiciary, United States Senate, and also subcommittees in

the House of Representatives since 1949. The hearings have been numerous. If one would look at the list of witnesses who have been called before these committees, it would be obvious that most of the witnesses are favorable witnesses for the major league side of the story. A few minor leaguers were called in the early committee hearings, but as the years go by, the voices of the minor leagues are more subdued and hardly is there a voice left.

Basic Reasons Why the Rule is Wrong.

1. Minor league operators are subject to the absolute control of their playing rosters by the major leagues.

2. Minor leagues are unstable and change membership almost annually.

3. Source of income for minor leagues is only at the gate, and acquiring and selling major league prospects to the major leagues is no longer a source of revenue.

4. The constant recall of players has destroyed the integrity of championship play in the league.

5. Prior baseball antitrust law dealt mostly with the reserve clause and not the entire business activities that have throttled the minor league operators. Minor league operators are basically civic-minded men who engage in the activity as an avocation, and their opportunities, because of the Baseball Rule, are extremely limited. Men of the caliber of Earl Manns, of the Atlanta Baseball Team of the Southern League, Jack Corbett, of El Paso, Arch Kingsley, of the Portland Baseball Club, Emil Sick, of the Seattle Rainiers, and Frank Lawrence, of the Portsmouth Club, are men of the past because this rule deprives men of that enthusiasm and character of the opportunity to engage in the national pastime.

6. The judicial reasoning that it is up to Congress to make the change is not intellectually honest. Congress, under the Sherman Act, gave the full thrust of their legislative power when they said "Every combination of restraint of trade is illegal."

7. The rule has to be changed if the law is to have the basic respect that it deserves. Stating that the Baseball Rule is an "anomaly", that baseball has "immunity", or that baseball has "established aberration" are all phrases that don't bring dignity to the law and should immediately be changed. The court has been of the erroneous opinion since Toolson that the protection of major league baseball is also the protection of minor league baseball. Nothing could be further from the truth.

LEGAL PRECEDENTS

In the Federal Baseball case, 259 U.S. 200, the Supreme Court held that

organized baseball was not subject to the federal antitrust legislation because baseball was not a commercial enterprise. Thirty years elapsed before the question again came before the court, in Toolson, 346 U.S. 356. At that time the court, on the basis of stare decisis, and without reexamining the underlying issues, reaffirmed Federal Baseball.

In 1955 the court was confronted with the Boxing case, 338 U.S. 246, and the court refused to follow the Baseball Rule and held that professional boxing matches were fully within the antitrust laws. It explained its Toolson decision on the basis of stare decisis and stated that the issue of whether or not an exemption from the antitrust laws should be granted in the first instance is "for the congress to resolve and not the Supreme Court of the United States."

In 1957, in Radovich, 352 U.S. 445, the football case, the court affirmed its ruling in the Boxing case. In Radovich, the court held that professional football was subject to the antitrust laws and then stated that if the ruling was unrealistic and illogical in view of its previous holdings, it was sufficient to answer, aside from the distinctions between the businesses, that "were we considering the question of baseball for the first time upon a clean slate, we would have no doubts." And then the court went on to say that congressional processes are more accommodative, affording the whole industry hearings and an opportunity to assist in the formulation of new legislation. The resulting product is, therefore, more likely to protect the industry and the public alike. That last statement was proved to be a very false prophecy. The whole structure of minor league baseball is controlled by the

major leagues.

The fact that the Baseball Rule is perpetuated only at congressional sufferance is not a very solid argument. Men like the Honorable Emanuel Cellars of the House of Representatives are no longer around to try to protect the minor leagues. The Majors have such a strangle hold on the remaining weak structure of minor league baseball that it would be difficult for any voice to make a noise loud enough to be heard within the monopolistic structure.

The United States Supreme Court should come to the full realization, late as it is, that the rule is unjust, it is arbitrary, it is illogical, it is intellectually dishonest and it is economically strangling to the minor leagues.

If due process means anything, the time is way overdue to give the minor league operator a day in court. One could

check the records and find that a minor league operator hasn't had a day in court, where major league activities are concerned, since 1922.

Wisconsin v. Milwaukee Braves, Inc., 31 Wisc. 2d 699, 144 N.W. 2d 1 (1966), Cert. denied 385 U.S. 990 (1966) is a case that places the minor leagues in "No man's land." The federal goverment has pre-empted the antitrust field so the state antitrust laws are ineffective, and the federal government is playing a ping pong match with the congress -- the result being that major league baseball maintains its special privilege status and the Minors are left out in the cold without any place to seek redress.

The Flood case glorified the major league status of yesteryear and ignored the plight of the Minors. Surely someone will see the grave injustice of the rule.

The Flood case stated that major league baseball has an "established aberration." This unreasonable result has to stop somewhere. Flood was fighting the reserve clause. This case involves and encompasses the entire operation of a minor league baseball club and the monopolistic offenses against it and the entire league.

Over the years, the lower District Courts have had serious doubts about the baseball rule. Judge Gus Solomon, in the District Court of Oregon, the Portland Baseball case, said the rule was a disgrace. Judge Fred Taylor, in the lower court in this case, could not understand why baseball has immunity and other sports did not. Judge Learned Hand, in Gardella v. Chandler, 172 F.2d 402 (2d Cir. 1949), along with Judge Frank, held that baseball was subject to the Sherman Antitrust laws.

2. If the Rule is to Continue Majors Have an Implied Duty Not to Overrun the Minors.

Boise Baseball Club is contending that if the court can create a special category for the major leagues and give them immunity from the Sherman Act, then it has the duty to see that those granted the special privilege do not overrun the Minors. Because of their monopolistic power, the Majors have become calloused to their contractual obligations and own practically all the players in the entire organized baseball. If the rule continues, the Minors have no redress whatsoever.

In Marjorie Webster Jr. Col. v. Middle States Ass'n. of C. & SS, 432 F.2d 650, 655 (1970), the court said that there is substantial expansion of judicial control of private associations if the association has substantial power to the detriment of its members.

3. Tortious Interference with Contractual Negotiations of Boise Baseball Club Is a Viable Cause of Action.

Boise Baseball Club stated a cause of action for tortious interference and was denied its day in court. This is a just cause. What is occurring since baseball has immunity from the Sherman Antitrust laws is that it is now becoming arrogant and feels it can overrun the Minors on basic common law rights. The court erred in denying plaintiff its day in court on this cause of action.

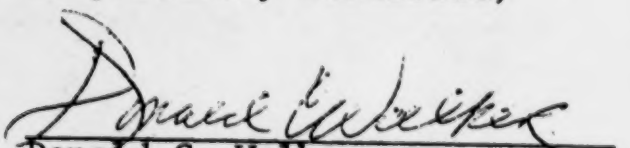
4. Boise Baseball Club Entitled to Breach of Contract Remedy for Violation of Rule 1 A of Organized Baseball Rules.

Here again, because of their monopolistic position and immunity, the Majors can circumvent contractual duties and have immunity. Boise Baseball Club is entitled to its day in court and a jury trial on its breach of contract action.

CONCLUSION

The United States Supreme Court is the greatest institution in the world that emphasizes the rule of law and justice. The Baseball rule cannot be justified, especially when applied to the monopolistic domination of a minor league baseball team and the entire league. The Petition should be granted.

Respectfully submitted,



Donald C. Walker
Attorney for Petitioner

APPENDIX A

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BOISE BASEBALL CLUB, INC., an Idaho Corporation,

Plaintiff-Appellant,

vs.

BOWIE K. KUHN, individually and as Commissioner of Baseball, LELAND MCPHAIL, individually and as President of the American League of Professional Baseball Clubs, CHARLES FEENEY, individually and as President of the National League of Professional Baseball Clubs, Atlanta Braves, Inc., Chicago National League Baseball Club, Inc., Cincinnati Reds, Inc., Houston Sports Association Inc., Los Angeles Dodgers, Inc., Metropolitan Baseball Club, Inc., Philadelphia National League Club, a Corporation, Pittsburgh Athletic Club, Inc., St. Louis National Baseball Club, Inc., San Francisco Baseball Club Inc., Golden West Baseball Co., (California Angels) Baltimore Baseball Club, Inc., John E. Fetzer Inc., (Detroit), Montreal Baseball Club Ltd., Oakland Athletic Division of Charles O. Finley, Inc., Texas Rangers, Ltd., Kansas City Royals Baseball Corp., Milwaukee Brewers Baseball Corporation, Inc., New York Yankees, a partnership, and Chicago White Sox Baseball Corp., Inc.,

Defendants-Appellees.

No. 78-3294
D.C. No. 77-1151

MEMORANDUM

Argued and Submitted — September 2, 1980

Decided — December 11, 1980

Appeal from the United States District Court
For the District of Idaho
Fred M. Taylor, District Judge, Presiding

Before: ALARCON and CANBY, Circuit Judges, and HOFFMAN, Senior District Judge*

Boise Baseball Club, Inc., appeals the decision of the district court granting summary judgment to appellees, the Commissioner of Baseball and 24 of the 26 major league teams. The action arises from the Oakland A's transfer of a player development contract from Boise to Medicine Hat, Alberta, as well as from the American League's expansion into Seattle. Boise argues that the district court erred by (1) ruling that major league baseball is immune from federal antitrust laws; (2) failing to create an implied duty on the major leagues not to subjugate the minor leagues; (3) failing to find that Oakland tortiously interfered with Boise's prospective sale of its player development contract to the Medicine Hat investors; (4) failing to find that appellees violated Rule 1A of the Professional Baseball Agreement in acquiring the Seattle territory of the northwest league without indemnifying Boise. Appellees have requested that the panel declare the appeal to be frivolous under Federal Rules of Appellate Procedure, Rule 38. We affirm, but do not find the appeal in its entirety to be frivolous.

I.

BASEBALL ANTITRUST EXEMPTION

The exclusion of baseball from the antitrust laws, anomalous as it may be, is thoroughly established. *Flood v. Kuhn*, 407 U.S. 258 (1972); *Toolson v. New York Yankees*, 346 U.S. 356 (1953); *Federal Baseball Club of Baltimore, Inc. v. National League*, 259 U.S. 200 (1922); *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101 (9th Cir. 1974); *Portland Baseball Club, Inc., v. Frick*, 282 F.2d 680 (9th Cir. 1960). The district court therefore properly dismissed appellants first cause of action.

II.

IMPLIED DUTY TO ALLOW THE MINOR LEAGUES TO FUNCTION INDEPENDENTLY OF THE MAJOR LEAGUES

Appellant contends that if major league baseball is not subject to antitrust sanctions, then the major leagues have an implied common law duty to allow the minor leagues to function independently. It

*The Honorable Walter E. Hoffman, Senior United States District Judge for the Eastern District of Virginia, sitting by designation.

asserts that each minor league team should be allowed to procure its own players, and to participate in decisions to shift players from one team to another. This argument was also properly rejected by the lower court. Application of state law liability to major league baseball was expressly rejected in *Flood, supra*. The Supreme Court stressed the need for uniform national regulation of baseball and indicated that state regulation would be an undue burden on interstate commerce.

III.

TORTIOUS INTERFERENCE WITH APPELLANTS PROSPECTIVE ADVANTAGE

Appellant claims that it laid the groundwork for transferring the team from Boise to Medicine Hat. At the last moment, Oakland unilaterally terminated the Boise player development contract and deprived the Boise investors of their one saleable asset. The investors were therefore deprived of an opportunity to recoup their losses.

The district court dismissed appellant's claim in reliance upon *Flood v. Kuhn, supra*. While *Flood* clearly invalidates state regulation aimed at the "business of baseball" itself, we do not interpret that decision as necessarily precluding individual actions of tort arising in a baseball context. Nevertheless, the dismissal of the tort claim was proper in the circumstances of this case.

In order to escape summary judgment, appellant had to show that Oakland was under a duty to continue the player development contract. No such duty appears on the face of the agreement or elsewhere in the record. Nor does appellant explain why Boise's right to recoup its losses by transferring the player development contract to Medicine Hat should prevail over Oakland's right to terminate and transfer. Oakland's decision to terminate the contract, rather than to allow Boise to sell its contract interest, is not actionable.

IV.

ARBITRATION

Appellant claims that appellees have failed in some unspecified manner to perform the conditions required under Rule 1A. This argument is totally without merit. All conditions under Rule 1A were complied with. The Seattle Rainiers challenged the arbitrator's award arising from the American League expansion into Seattle but the Second Circuit upheld both the procedures of Rule 1A and the

proceedings under it. *Seattle Rainiers Baseball Club, Inc., v. American League of Professional Baseball Clubs,* No. 77-7291 (10/17/1977). If Boise has any claim arising from the acquisition of the Seattle territory, which we do not mean to imply, it is against the Northwest League which ostensibly represented Boise in the arbitration proceedings. Boise has no claim against the Commissioner of Baseball and the major leagues.

Finally, Boise's attack upon the arbitration proceeding is time barred. A motion to vacate an arbitration award must be filed within three months, 9 U.S.C. § 12. Appellant's action commenced some ten months after the arbitration award and is therefore untimely.

V.

FRIVOLOUS APPEAL

Appellees have requested that the panel declare that this appeal is frivolous. Fed. R. App. Proc. 38. Appellees do not seek attorney fees or other damages, but hope that such a declaration will present future suits of this sort by appellants counsel. Appellants' counsel has twice before brought actions alleging the same basic monopolistic practices and both times the district court rejected his arguments and this court affirmed. *Portland Baseball Club Inc., v. Kuhn, supra; Portland Baseball Club, Inc., v. Frick, supra.* We agree that these contentions are frivolous. Appellant has raised distinct contract and tort claims here, however, which were not present in the two *Portland* cases. Although they failed, we cannot characterize the latter claims, or therefore the appeal as a whole, as frivolous.

The decision of the district court is affirmed.

RECORDER-SUNSET PRESS, SAN FRANCISCO, CA 12-26-80—550

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BOISE BASEBALL CLUB, INC., an Idaho Corporation, Plaintiff-Appellant, vs. BOWIE K. KUHN, individually and as Commissioner of Baseball, et al., Defendants-Appellees.	JUDGMENT No. 78-3294 DC CV 77-1151

APPEAL from the United States District Court for the District of IDAHO (Boise)

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of IDAHO (Boise) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered December 11, 1980.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

BOISE BASEBALL CLUB, INC., an Idaho corporation, Plaintiff, vs. BOWIE K. KUHN, et al., Defendants.	)	Civ. No. 77-11 MEMORANDUM OF DECISION and ORDER

Plaintiff filed this action on September 15, 1977, naming as defendants the Commissioner of Baseball, Bowie Kuhn; the Presidents of the National and American Leagues of Professional Baseball Clubs, Charles Feeney and Leland McPhail, respectively, and the 24 Major League Clubs which made up the Major Leagues of Professional Baseball in 1976. Plaintiff's complaint alleged four causes of action which can be summarized as follows:

(1) The first cause of action is described as an "Anti-Trust Action". This cause alleged that through combination and conspiracy the defendants restrained and monopolized interstate trade and commerce in the business of professional baseball games; (2) The second cause of action is described as one for a "Violation of Implied Duty". This cause alleges that if an anti-trust action is not viable because professional baseball is exempt from the anti-trust laws, then defendants owe plaintiffs an "implied duty and trust" to treat plaintiffs equitably and without overreaching; (3) The third cause is described as one for "Tortious Interference". It contends that baseball's "monopolistic system" permitted the defendant Oakland Baseball Club to "tortiously interfere" with contractual negotiations plaintiff was conducting with other parties;

(4) The fourth cause of action is described as one resulting from a "violation of Rule 1-A". This cause alleges that certain of the defendants failed to perform certain conditions required by Professional Baseball Rule 1 (a).

This matter is now before the court on defendants' motion to dismiss the complaint. After fully considering the oral arguments and briefs of counsel, and carefully examining the record, it is the opinion of the court that defendants' motions must be granted.

Plaintiff's first cause of action, which alleges a violation of the federal anti-trust laws, must be dismissed. It has been consistently held by the United States Supreme Court and the Ninth Circuit Court of Appeals that the business of baseball is not subject to the anti-trust laws. Flood v. Kuhn, 407 U.S. 258 (1972); Toolson v. New York Yankees, 346 U.S. 356

(1953); Federal Baseball v. National League 259 U.S. 200 (1922); Portland Baseball Club v. Kuhn, 491 F. 2d 1101 (9th Cir. 1974); and Portland Baseball Club, Inc. v. Frick (Baltimore Baseball Club, Inc.), 282 F.2d 680 (9th Cir. 1960). Although plaintiff makes an impassioned and quite well-reasoned argument as to why the above cases should not be followed, this court is duty bound to do so.

Plaintiff's second, third and fourth causes of action also fail to state a cause of action. The second and third causes of action are an example of alternative pleading. Plaintiff contends that if defendants are not subject to the antitrust law sanctions, then a common law action lies, i.e. a tort action and/or a contract or quasi-contract action. The contentions in the second and third causes of action, like those in the first, are not novel and

have been dealt with by the United States Supreme Court. In Flood v. Kuhn, supra, the court specifically rejected this argument. Flood v. Kuhn, 408 U.S. 258, 284.

A lengthy discussion of plaintiff's fourth cause of action is unnecessary. Suffice it to say, this contention has been before the courts prior to this action and found to be without merit. Portland Baseball Club, Inc. v. Kuhn, 368 F.Supp 1004 (D.C. Ore. 1972), aff'd 491 F.2d 1101 (9th Cir. 1974).

Accordingly, it is ORDERED that the motions of defendants to dismiss plaintiff's complaint be, and the same hereby are, GRANTED.

Dated this 1st day of September, 1978.

s/ Fred M. Taylor
FRED M. TAYLOR
United States District Judge

APPENDIX C

STATUTORY PROVISIONS

"28 U.S.C. § 1254. Courts of appeals; certiorari; appeal; certified questions

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

"(1) By writ of certiorari granted upon the petitio n of any party to any civil or criminal case, before or after rendition of judgment or decree;.... ."

APPENDIX D

SHERMAN ACT

July 2, 1890, Chap. 647, § 1, 26 Stat. 209; 15 U.S.C. § 1.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * *

July 2, 1890, Chap. 647, § 2, 26 Stat. 209; 15 U.S.C. § 2.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

No. 80-1530

APR

IN THE

Supreme Court of the United States

October Term, 1980

BOISE BASEBALL CLUB, INC.,
an Idaho Corporation
Petitioner

v.

BOWIE K. KUHN, *et al.*
Respondents

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The "Questions Presented" in the Petition (pp. 2-3) are statements rather than questions. The questions are:

1. Whether, at the request of a minor league baseball club seeking review of a decision of a Circuit Court of Appeals, this Court should overturn its decisions in *Federal Baseball Club of Baltimore, Inc.* v. *National League,* 259 U.S. 200 (1922); *Toolson* v. *New York Yankees, Inc.,* 346 U.S. 356, reh. den. 346 U.S. 917 (1953); and *Flood* v. *Kuhn,* 407 U.S. 258 (1972), holding that the business of professional baseball is not within the scope of the federal antitrust laws unless and until Congress determines otherwise?

2. Whether the Court of Appeals was correct in holding that Petitioner's claim that the major leagues have an implied common law duty to allow the minor leagues to function independently was properly rejected by the District Court?

3. Whether the Court of Appeals was correct in holding that there was no tortious interference with negotiations for contract when, upon the Oakland Club terminating its player development contract with Petitioner, Petitioner was unable to transfer its team to Medicine Hat, as the Oakland Club had the right to terminate the contract and was under no duty to continue it?

4. Whether the Court of Appeals was correct in holding that Petitioner had no claim against Respondents based on Professional Baseball Rule 1(a) resulting from the expansion of the American League into Seattle, as all conditions of Rule 1(a) were complied with, and any claim Petitioner might have would be against the Northwest League of which it had been a member?

PARTIES

The Respondents named in the Petition are Bowie K. Kuhn, individually and as Commissioner of Baseball; Leland MacPhail, individually and as President of the American League of Professional Baseball Clubs; Charles Feeney, individually and as President of the National League of Professional Baseball Clubs; Atlanta Braves, Inc.; Chicago National League Baseball Club; Cincinnati Reds, Inc.,; Houston Sports Association, Inc.; Los Angeles Dodgers, Inc.; Metropolitan Baseball Club, Inc.; Philadelphia National League Club; Pittsburgh Athletic Club, Inc.; St. Louis National Baseball Club, Inc.; San Francisco Baseball Club, Inc.; Golden West Baseball Co.; Baltimore Baseball Club, Inc.; John E. Fetzer, Inc.; Montreal Baseball Club, Ltd.; Oakland Athletic Division of Charles O. Finley, Inc.; Texas Rangers, Ltd.; Kansas City Royals Baseball Corp.; Milwaukee Brewers Baseball Corporation, Inc.; New York Yankees, a partnership; and Chicago White Sox Baseball Corp., Inc.

In addition to these Respondents, the Complaint also named as defendants the Boston Red Sox; Cleveland Indians, Inc.; Minnesota Twins, Inc.; and San Diego Padres Baseball Club.

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IN THE

Supreme Court of the United States

October Term, 1980

No. 80-1530

BOISE BASEBALL CLUB, INC.,
an Idaho Corporation

Petitioner

v.

BOWIE K. KUHN, *et al.*

Respondents

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

"Organized Baseball" is a system of self-regulating interdependent baseball clubs and leagues. At the apex of this structure is the Commissioner of Baseball, at the present time respondent Bowie K. Kuhn. The twenty-four defendant Major League Clubs (plus two more which were not named as defendants in this action) make up the "Major Leagues". There are two Major Leagues, the American League and the National League. In addition to the Major Leagues there are nineteen other Leagues which in turn

belong to an Association known as the National Association of Professional Baseball Leagues (Minor Leagues). The various Major and Minor League Clubs and Leagues in turn have entered into a series of agreements to govern their relationship. These agreements include:

(1) The Major League Agreement to which all Major League Clubs are parties. This Agreement establishes the Office of the Commissioner of Baseball and authorizes the issuance of certain rules relating to the conduct and relationship of the Major League clubs and players.

(2) The Professional Baseball Agreement ("PBA") to which the American and National League on the one hand, and the National Association of Professional Baseball Leagues on the other, are parties. The PBA authorizes the issuance of certain rules relating to the conduct and relationship of the Minor Leagues or National Association Clubs, players and the Major Leagues. Among the rules issued pursuant to the PBA are those relating to:

(a) the protection of National Association territory (Professional Baseball Rule 1(a)).

(b) the number of National Association Clubs each Major League Club "shall support, either through ownership or Player Development Contract" (Professional Baseball Rule 1(c), and

(c) the form of player development contract between Major League and National Association Clubs (Professional Baseball Rule 10).[1]

---

[1]Player development contracts are agreements between individual Major League Clubs and National Association Clubs by which Major League Clubs support National Association Clubs financially and otherwise.

During the 1975 and 1976 seasons the Petitioner operated in the Northwest League, a Class A National Association League. Petitioner entered into a player development contract with the Oakland A's of the American League covering each of Petitioner's two years of operation. In October, 1976 the Oakland A's terminated the player development contract, pursuant to its terms and in accordance with the Professional Baseball Rules. The propriety of the termination was expressly recognized by Petitioner's president, Michael Manning, who in October, 1976 wrote a letter to the Northwest League's President setting forth the circumstances of his club's decision to terminate operations. In that letter, after stating that financial losses made it impossible "to continue to operate in Boise or elsewhere," Mr. Manning stated that "we have informed the Oakland Athletics of the situation" and that as a result Oakland had informed Petitioner it was terminating the player development contract with Petitioner.

In October, 1976, and pursuant to Professional Baseball Rule 1(a), the American League filed notice of its intention to acquire the Seattle, Washington territory for the American League expansion Club, which became the Seattle Mariners and commenced operations with the 1977 baseball season. Pursuant to Professional Baseball Rule 1(a) the American League was required to pay the Northwest League (the National Association League) and the Seattle Rainiers (the National Association Club then operating in Seattle) "just and reasonable compensation" for their loss of the territory. When the American League and the Northwest League and the Seattle Club could not agree on that amount, an arbitration hearing was held, as provided for by Professional Baseball Rule 1(a). As a consequence, on November 17, 1976, an arbitration award

fixed $25,000 as "just and reasonable compensation" to the Northwest League for the loss of the Seattle territory. The American League paid the award to the Northwest League which accepted the payment and did not contest the award.

The Seattle Rainiers by contrast, contested the separate award ($60,000) in its favor by commencing an action, pursuant to 9 U.S.C. § 9 (the Federal Arbitration Act). Both the District Court for the Southern District of New York, No. 77-787 (S.D.N.Y. May 10, 1977) and the Court of Appeals for the Second Circuit, Slip opinion October 17, 1977, No. 77-7291 (2d Cir. Oct. 17, 1977) sustained the award and the validity of Professional Baseball Rule 1(a).

Approximately one year after ceasing to do business entirely, Petitioner brought this action in the United States District Court for the District of Idaho in September of 1977 to assert its broad claims against the fundamental operations of Organized Baseball, alleging (1) that such operations constitute violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2), (2) that Respondents violated an implied duty to the Minor Leagues and Petitioner not to overrun the Minor Leagues and Clubs, (3) that the Respondents tortiously interfered with contractual negotiations that Petitioner was conducting with parties in Medicine Hat, Alberta, Canada, and (4) that Respondents had breached contractual obligations based on Professional Baseball Rule 1(a) concerning inclusion of minor league territory in the Major Leagues.

The District Court granted summary judgment for Respondents (see Memorandum Decision and Order, Petition, Appendix B, pp. A-6 to 10), and, on appeal, the Court of Appeals for the Ninth Circuit affirmed the judgment (see Petition, Appendix A, pp. A-1 to 5).

ARGUMENT

There is no question presented by the Petition that would warrant the grant of a writ of certiorari here, and Petitioner has not advanced any valid reason for granting the writ. Petitioner does not claim that the decision below conflicts with any decision of any other Court of Appeals or of this Court. Indeed, the only federal question presented is whether the fundamental operations of baseball, in the absence of Congressional action, is within the scope of the federal antitrust laws, a question that has already been decided consistently several times by this Court. *Federal Baseball Club of Baltimore, Inc.* v. *National League,* 259 U.S. 200 (1922); *Toolson* v. *New York Yankees, Inc.,* 346 U.S. 356, reh. den. 346 U.S. 917 (1953); *Kowalski* v. *Chandler,* 346 U.S. 356, reh. den. 346 U.S. 917 (1953); *Corbett* v. *Chandler,* 346 U.S. 356, reh. den. 346 U.S. 917 (1953); *Flood* v. *Kuhn,* 407 U.S. 258 (1972). The other questions presented are all questions of state law which are of no general importance. The questions with respect to an implied duty of the Major Leagues to the Minor Leagues, and Professional Baseball Rule 1(a), are of importance only to those in Baseball; and the question with respect to tortious interference is limited to the facts of this case and concerns only the litigants.

The decision below on all four questions was correct for the reasons stated therein, and should not be reviewed by this Court.

I. THIS COURT HAS CONSISTENTLY HELD THAT THE BUSINESS OF BASEBALL IS NOT SUBJECT TO THE FEDERAL ANTITRUST LAWS, UNLESS AND UNTIL CONGRESS DETERMINES OTHERWISE

On three separate occasions, the latest being in 1972, this Court has ruled that "the business of baseball", including its fundamental and structural agreements and player control arrangements, is exempt from the federal antitrust laws. *Flood* v. *Kuhn,* 407 U.S. 258 (1972); *Toolson* v. *New York Yankees, Inc.,* 346 U.S. 356 (per curiam), reh. den. 346 U.S. 917 (1953); *Federal Baseball Club of Baltimore, Inc.* v. *National League,* 259 U.S. 200 (1922). As the Court concluded in *Toolson,* "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." 346 U.S. at 357.

Against this background, and in the absence of any intervening Congressional legislation on this subject, Petitioner's plea that this Court should once again consider a question it had throughly and definitively resolved on three prior occasions can only be regarded as frivolous.[2]

Petitioner, a minor league club which came into baseball long after the antitrust exemption had been established and reiterated, bases its plea for Supreme Court review solely on the simplistic *ipse dixit* notion that fifty-nine years of judicial precedents by this Court and lower courts are wrong, and ought to be overruled.[3]

---

[2]Indeed, the Court below stated that the appeal from the District Court's dismissal of the antitrust allegations was frivolous. (Petition, Appendix A, p. A-4).

[3]In addition to *Flood, Toolson* and *Federal Baseball,* see, e.g., *Finley v. Kuhn,* 569 F.2d 527 (7th Cir. 1978), *cert. den.,* 439 U.S. 876 (1978). *Portland Baseball Club, Inc. v. Kuhn,* 368 F. Supp. 1004, 1007 (D. Or. 1971), aff'd per curiam, 491 F.2d 1101 (9th Cir. 1974); *Salerno v. American League,* 429 F.2d 1003, 1005 (2d Cir. 1970), cert.

In *Federal Baseball,* plaintiff baseball club, a non-major league club outside of Organized Baseball, sued the two major leagues, contending, among other things, that the refusal of the two leagues to permit plaintiff to play games against the leagues' teams constituted a boycott in violation of the Sherman Act. In an opinion by Mr. Justice Holmes, the Court rejected plaintiff's claims on the ground that professional baseball is not within the scope of the federal antitrust laws (259 U.S. at 208-09).

In *Toolson,* the Supreme Court again ruled that the antitrust laws were inapplicable to professional baseball (346 U.S. at 357). *Toolson* was decided together with two companion cases, *Kowalski* v. *Chandler* and *Corbett* v. *Chandler,* supra. In *Corbett,* a minor league club, as is Petitioner here, alleged that professional baseball's structure violated the antitrust laws. After considering all three cases, the court stated:

> "In *Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs,* 259 U.S. 200 (1922), this Court held that the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws. Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect. The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation.

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denied, 400 U.S. 1001 (1971); *Portland Baseball Club, Inc. v. Baltimore Baseball Club, Inc.,* 282 F.2d 680 (9th Cir. 1960) (per curiam). See also *State v. Milwaukee Braves, Inc.,* 31 Wis. 2d 699, 144 N.W. 2d 1 (1966), cert. denied sub nom. *Wisconsin v. Milwaukee Braves, Inc.,* 385 U.S. 990 (1966).

> . . . We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation. Without re-examination of the underlying issues, the judgments below are affirmed on the authority of *Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs,* supra, so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." (346 U.S. at 356-7.) (Emphasis added.)

In *Radovich v. National Football League,* 352 U.S. 445, reh. den 353 U.S. 931 (1957), this Court elaborated on its decision in *Toolson* and repeated in unequivocal terms its ruling as to the inapplicability of the antitrust laws to the business of professional baseball. Explaining its rationale, the Court stated (pp. 450-1):

> "In *Toolson* we continued to hold the umbrella over baseball that was palced there some 31 years earlier by *Federal Baseball.* The Court did this because it was concluded that more harm would be done in overruling *Federal Baseball* than in upholding a ruling which at best was of dubious validity. Vast efforts had gone into the development and organization of baseball since that decision and enormous capital had been invested in reliance on its permanence. Congress had chosen to make no change. All this, combined with the flood of litigation that would follow its repudiation, the harassment that would ensue, and the retroactive effect of such a decision, led the Court to the practical result that it should sustain the unequivocal line of authority reaching over many years." (Footnotes omitted.)

In 1972, in *Flood,* the Supreme Court held again that professional baseball is exempt from the antitrust laws. Although the *Flood* case involved an antitrust challenge to Baseball's reserve system, the Court did not confine its holding to that narrow aspect of professional baseball:

> "We repeat for this case what was said in Toolson:
>
> " 'Without re-examination of the underlying issues, the [judgment] below [is] affirmed on the authority of *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs,* supra, so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws.'
>
> "And what the Court said in *Federal Baseball* in 1922 and what it said in *Toolson* in 1953, we say here again in 1972: the remedy, if any is indicated, is for congressional, and not judicial, action." (407 U.S. at 285).

Congresional action in response to the decisions of the Supreme Court confirms that the business of baseball as a whole is exempt from the federal antitrust laws. As the Court observed in *Flood:* "Since *Toolson* more than 50 bills have been introduced in Congress relative to the applicability or nonapplicability of the antitrust laws to baseball" (407 U.S. at 281), but none was passed. Based on its thorough review of Congressional action during this period, the Court concluded that it would be improper to alter the antitrust immunity set forth in *Federal Baseball* and *Toolson* because:

> "Congress, by its positive inaction, has allowed those decisions to stand for so long and, far beyond mere inference and implication, has

> clearly evinced a desire not to disapprove them legislatively." (407 U.S. at 283-84.)

In the nine years since *Flood,* Congress has still taken no action on this matter, thereby demonstrating again "by its positive inaction" that it desires "not to disapprove them [the *Federal Baseball, Toolson* and *Flood* decisions] legislatively."

All the reasons upon which the decision in *Flood* was based in 1972 are equally extant today.

Accordingly, we submit that there is no basis for the Court to review the lower court's unanimous affirmance of the dismissal of Petitioner's antitrust claim.

II. THE BUSINESS OF BASEBALL IS NOT SUBJECT TO STATE REGULATION BY IMPOSITION OF AN IMPLIED DUTY UNDER STATE COMMON LAW.

Petitioner contends that if Baseball is not subject to federal antitrust law then there exists an implied duty upon the Major Leagues to permit the Minor Leagues to operate independently. Such a result would require the abrogation of various agreements freely entered into between the Major Leagues and the Minor Leagues and the rules promulgated pursuant to such agreements by the parties thereto. Petitioner does not contend in this connection that the Major Leagues violated any such agreements or rules but rather that the entire structure of Organized Baseball, through application of state common law, cannot be permitted to operate as established.

As correctly stated by the Court of Appeals:

> "This argument [application of an implied duty] was also properly rejected by the lower court. Application of state law liability to major league

> baseball was expressly rejected in [*Flood*]. . . . The Supreme Court stressed the need for uniform national regulation of baseball and indicated that state regulation would be an undue burden on interstate commerce." (Petitioner Appendix A, p. A-3.)

It would be difficult to imagine a greater burden upon interstate commerce or serious disruption of uniform regulation than through the application of such a nebulous concept as an "implied duty" enforced independently by each of the approximately 40 states in which Organized Baseball operates.

Whether it be imposition of state antitrust statutes or implied duties under state common law, the decision of this Court in *Flood* controls, and Petitioner's claim must be rejected.

III. THERE WAS NO TORTIOUS INTERFERENCE BY RESPONDENTS WITH PETITIONER'S CONTRACT NEGOTIATIONS.

Petitioner claims that the Respondents tortiously interfered with contract negotiations it sought to conduct with persons in Medicine Hat, Alberta, Canda, to move the team there when the Oakland Club terminated its Player Development Contract with Petitioner. The claim is without any justification whatever.

Petitioner, prior to bringing this action, admitted that financial losses made it impossible to continue operations in Boise or elsewhere, and that upon advising the Oakland Club of the situation, Oakland terminated its player development contract with Petitioner.

As the Court of Appeals held in rejecting this claim of Petitioner, the Oakland Club had the right to terminate

the contract and had no duty to continue it, and no rights of Petitioner were violated (Petition, Appendix A., p. A-3).

The decision below on this purely state law claim is limited to the facts of this case, affects only the parties to this litigation, and presents no issue for review by this Court.

IV. PETITIONER'S CLAIM BASED ON PROFESSIONAL BASEBALL RULE 1(a), AN INTERNAL BASEBALL RULE, PRESENTS NO QUESTION FOR REVIEW BY THIS COURT.

Finally, Petitioner has asserted a state law claim based on Professional Baseball Rule 1(a), because the American League added a club in Seattle commencing with the 1977 season. The City of Seattle had been in the territory of the Northwest League of which Petitioner was a member in 1975 and 1976.

This Rule required the payment of just and reasonable compensation to both the Seattle Rainiers, the minor league club, and its league, the Northwest League, when the American League occupied the Seattle territory.

Petitioner claims that the Respondents failed to abide by and violated this Rule by the expansion into Seattle, and thus breached their contract with the minor league clubs, including Petitioner. However, as the Court of Appeals held, such claim was "totally without merit"; all the conditions and procedures of that Rule were followed when that expansion occurred; such procedures and proceedings under the Rule had previously been upheld by the Court of Appeals for the Second Circuit in *Seattle Rainiers Baseball Club v. American League,* No. 77-7291, slip opinion (10/17/77), affirming No. 77-987 (S.D.N.Y.

5/10/77); and, if Petitioner had any claim under the Rule, it was against the Northwest League which had been fully compensated under the Rule (Petition, Appendix A, pp. A-3, 4).

Petitioner also, after having made this claim based on violation of the Rule, inconsistently seems to imply that the Rule itself is invalid. However the validity of Rule 1(a) has been judicially determined not only in the *Seattle Rainiers Baseball Club* case, *supra,* but prior thereto in *Portland Baseball Club v. Kuhn,* 368 F. Supp. 1004 (D. Or. 1971), aff'd per curiam, 491 F.2d 1101 (9th Cir. 1974).

In any event it is manifest that the application and interpretation of an internal rule of Organized Baseball, held valid by the Courts of Appeals of two Circuits, presents no issue for review by this Court.

CONCLUSION

For all the foregoing reasons it is respectfully submitted that the decision of the Court of Appeals was clearly right and that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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